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MONTANA LEGISLATIVE HISTORY

Chapter 510 19 93

Bill H 436 S _____ Original bill & history ___C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	Feb 10	✓C	Hearing Date(s)	Apr 01	✓C
	Mar 05	✓C		Apr 02	✓C
		C			C
		C			C
Date Out	Mar 05	✓C		Apr 05	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO STATE ADMINISTRATION		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	47	1
3/10	3RD READING CONCURRED	43	3
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/24	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 283		
	EFFECTIVE DATE: 07/01/93		

HB 436 INTRODUCED BY T. NELSON, ET AL.

CLARIFY DEFINITION OF POLLUTION FOR PROPERTY TAX PURPOSES

2/03	INTRODUCED		
2/03	REFERRED TO TAXATION		
2/03	FISCAL NOTE REQUESTED		
2/03	FIRST READING		
2/10	HEARING		
2/10	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
3/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/09	2ND READING PASSED	95	4
3/11	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
3/13	FIRST READING		
3/13	REFERRED TO TAXATION		
4/01	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	47	0
4/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	98	2
4/15	3RD READING AMENDMENTS CONCURRED	98	2
4/20	SIGNED BY SPEAKER		
4/21	SIGNED BY PRESIDENT		
4/22	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 510		
	EFFECTIVE DATE: 10/01/93		

HB 437 INTRODUCED BY HARRINGTON

REVISE DEFINITION OF NET BUSINESS INCOME FOR LOW-INCOME PROPERTY TAX RELIEF

2/03	INTRODUCED		
2/03	REFERRED TO TAXATION		
2/03	FISCAL NOTE REQUESTED		
2/03	FIRST READING		
2/06	FISCAL NOTE RECEIVED		
2/08	HEARING		
2/09	FISCAL NOTE PRINTED		
2/10	COMMITTEE REPORT—BILL PASSED		
2/13	2ND READING PASSED	95	4
2/16	3RD READING PASSED	96	3

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0436, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act clarifying the definition of air and water pollution control equipment for property tax purposes; providing requirements for rules governing the certification of the equipment; specifying the roles of the Department of Revenue and of the Department of Health and Environmental Sciences (DHES) in classifying and valuing air and water pollution control equipment; reviewing compliance with applicable standards as a condition of maintaining the certification.

ASSUMPTIONS:
1. DHES will receive approximately 15 new applications per year for consideration.
2. Each review takes 8 hours per application to determine the portion exclusively for water pollution control. 8(15)/1880=.064 FTE.
3. Rule development takes 2 months for 1 FTE in first year. (2/12=.167 FTE).
4. One appeal will be received per year. Appeals will take 2 weeks each for 1 FTE to resolve. (2(40)/1880=.043 FTE).
5. Compliance checks will have to be made on 100 facilities per year. Each check will take an average of 1 hour. (100/1880=.053 FTE).
6. A grade 15 engineer will be required to do the work at .33 FTE in FY94 and .16 FTE in FY95 and succeeding years.
7. The Department of Revenue projects a positive but unpredictable impact on future property tax revenues.

FISCAL IMPACT: DHES

	FY '94			FY '95		
Expenditures:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0	.33	.33	0	.16	.16
Personal Services	0	$13,720	$13,720	0	$6,720	$6,720
Operating	0	$5,880	$5,880	0	$2,880	$2,880
Total	0	$19,600	$19,600	0	$9,600	$9,600
Funding:						
General Fund	0	$19,600	$19,600	0	$9,600	$9,600

Dave Lewis 2-9-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas E. Nelson 2-10-93
THOMAS E. NELSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0436, as introduced

HB 436

HEARING ON HB 418

Opening Statement By Sponsor:

REP. DAVE BROWN, House District 72, Butte, said HB 418 would permit partial payments on delinquent property taxes. He said the County Treasurers had objections to the bill. He has agreed to work with them over the next two years, and asked the Committee to kill the bill.

EXECUTIVE ACTION ON HB 418

Motion/Vote: **REP. HARPER MOVED THAT HB 418 BE TABLED.** Motion carried unanimously.

HEARING ON HB 436

Opening Statement By Sponsor:

REP. TOM NELSON, House District 95, Billings, said HB 436 was introduced at the request of the Yellowstone County Commissioners to clarify section 15-6-135 dealing with Class 5 property as it pertains to water and air pollution. He said the intent of the proposal is to clarify the meaning of "preferential tax treatment" for property, facilities and machinery which are installed to comply with water and air pollution laws. The tax incentive encourages the clean-up of air and water.

Proponents' Testimony:

Mike Mathew, Yellowstone County Commissioner, Billings, appeared in support of HB 436. He said they have no objections to amendments which would clarify the existing language. He said Yellowstone County is very concerned about air quality and growth is dependent on SO_2 emission control. He said they are looking at, and encouraging, any pollution devices that could be used in any industrial operations for that purpose. He said Yellowstone County has been aggressive in the use of tax incentives to encourage growth and cleaner operations. The Department of Health and Environmental Sciences (DHES) makes the determination of Class 5 property but they insufficient guidelines and rulemaking authority. This bill established guidelines and rulemaking authority so these designations could be clearly made and easily administered.

Opponents' Testimony:

Ted Doney, attorney and lobbyist for ASARCO, Inc., Colstrip Energy Limited Partnership, and Billings Generation, Inc., stated they had difficulties with the bill but supported the concept of providing guidelines for designating Class 5 property. However, as the bill is written, it severely restricts the industries'

ability to classify their air and water pollution control equipment as classified property. He enumerated the various problems with the bill. He said on Page 2, line 25, the word "exclusively" is severely limiting and should be stricken. Potentially, all of the air pollution control equipment could be taken out of Class 5 because it is not used "exclusively" for air pollution control. Referring to page 3, lines 17-18, he said the wording is vague regarding non-compliance. He asked if a one-time violation of the permit considered non-compliance. There are instances where industries have down-time because of "blips", which are inevitable in any industry. On page 3, line 15, he proposed inserting the word "substantial" before "compliance", and on line 17 strike "a" and insert "substantial". This would give HEC some flexibility. With these amendments, he said they could support the bill.

Rex Manuel, representing CENEX Petroleum Division, Laurel, said the intent of the bill was good but he believed it could develop into a Yellowstone County Relief Act that is not the intent of the Yellowstone County Commissioners. **Mr. Manuel** said he agreed with **Mr Doney's** proposed amendments. He read a letter from **R.E. Pletcher, Refinery Manager, CENEX. EXHIBIT 1**

John Fitzpatrick, Director of Community and Governmental Services, Pegasus Gold, Inc., endorsed the amendment to strike "exclusively" proposed by **Mr. Doney.** He identified circumstances whereby the use of pollution control equipment provides a by-product which could also be used or sold. He said there are many applications of pollution control equipment where there may be several benefits taking place at the same time but no by-product being generated for sale, e.g., a settlement pond which is also used as a stock water source by local ranchers. He urged the adoption of the amendment.

Ken Williams, representing Montana Power Company, said he shared the concerns expressed by previous opponents dealing with exclusivity and the compliance reviews. He said they were concerned with the potential impacts on the Corette Generating Station and the MHD project.

Don Allen, representing the Montana Wood Products Association, agreed with the previous testimony.

Informational Testimony:

Jeff Chaffee, Air Quality Bureau, Department of Health and Environmental Sciences (DHES), presented written informational testimony. **EXHIBIT 2**

Questions From Committee Members and Responses:

REP. DRISCOLL asked who determined air pollution control equipment at the plant in Billings. **Steve Pilcher, Administrator, Environmental Sciences Division, DHES,** said in the absence of any

guidelines which differentiate between processing equipment and air pollution control equipment, it was determined the equipment was air pollution control.

REP. DRISCOLL asked if Montana Sulfur used entirely pollution control equipment. **Mr. Pilcher** said it would be basically the same situation under the current interpretation of the statute. **REP. DRISCOLL** asked **Mr. Pilcher** if he could find out the classification of Montana Sulfur. **Mr. Pilcher** said he would do so.

REP. McCAFFREE asked **Mr. Doney** what the industries would consider a definition of "substantial compliance". **Mr. Doney** said industry would interpret it to mean if there is a one-time violation they would still be in substantial compliance; twice a year, probably still in substantial compliance. There are situations where there is a temporary non-compliance if this happened a few times a year. Otherwise, if the plant was operating properly and was in compliance, they would still be in substantial compliance. A violation once a week would not be substantial compliance.

Closing Statement by Sponsor:

REP. NELSON said the amendments proposed by **Mr. Doney** were appropriate and suggested that **Mr. Doney** and others submit an appropriate definition of "substantial compliance".

HEARING ON HB 495

Opening Statement by Sponsor:

REP. JIM ELLIOTT, House District 51, Trout Creek, said the bill basically extends the provisions of the catering endorsement, which is available to anyone in Montana who owns an all-beverage license, to someone currently holding a beer and wine license. HB 495 lowers the annual fee from $250 to $25. The primary purpose is not to sell liquor at the catered event but to have beer or wine available. Currently, the sponsor of the event must buy their own wine. Under the all-beverage license the Department of Revenue (DOR) must be notified of the event. A $35 fee must be paid for each catered event. DOR submitted amendments coordinating the bill with the all-beverage license. **EXHIBIT 3**

Proponents' Testimony:

Dick and Millie Wells, owners of Lonesome Dove Restaurant and Antiques, Thompson Falls, said they were the only fine food restaurant between Missoula and the Idaho border with wide recognition. He said they receive frequent requests to cater. The customers assume they are able to serve beverages as well. He said the opportunity to make a living in that rural area of

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 2/10/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON	✓		
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. McCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

FARMERS UNION CENTRAL EXCHANGE, INC.
P.O. Box 909, Laurel, Montana 59044

EXHIBIT 1
DATE 2/10/93
HB 436

HB 436

Testimony of R.E. Pletcher, Refinery Manager
CENEX, Laurel, Montana

As many of you know, CENEX is a regional farm cooperative which has, for fifty years, owned and operated the Laurel Refinery.

Although the authors may not have intended it, CENEX perceives this bill to be tax increase legislation in disguise. It severely limits the types of environmental projects eligible for favorable tax treatment. Contrary to the stated intent of the bill, it would not increase the use of air and water pollution control equipment.

By restricting the definition of air and water pollution equipment to that which is operated exclusively for pollutant control, the vast majority of worthwhile environmental projects could be left out. Seldom does an environmental project have such a narrow focus as to provide only one benefit, and, in fact, most pollutants are ultimately recovered as by-products. The production of by-products from pollutants or the recovery and recycle of materials which would otherwise become pollutants is the essence of current industrial environmental strategy and deserves to be treated and taxed as the original legislation intended. Coincidental non-environmental benefits should not be used to totally exclude a project from qualification.

Tieing tax treatment to compliance also seems inappropriate, since compliance is an issue which should be, and is, dealt with in the construction and operating permit areas. Increasing taxable valuation based on episodes of non-compliance certainly doesn't encourage the installation of pollution control equipment, and is in conflict with the statement of intent.

CENEX has made a major financial commitment to reduce pollutant emissions at Laurel through the installation of an 80 million dollar desulfurizer. Yellowstone County has benefited economically and will benefit environmentally from this investment. Changes in existing law which increase our tax liability at the eleventh hour seem unfair and unjustified. Please vote against this bill.

EXHIBIT 2
DATE 2/10/93
HB 436

Montana Department of Health and Environmental Sciences
Air Quality Bureau

Testimony on HB 436

Before the Taxation Committee of the Montana House of Representatives	:	Presented by the Air Quality Bureau, MDHES

A bill to clarify the definition for pollution control tax credit.

Background

In 1967, the Montana Legislature passed the Montana Clean Air Act establishing the framework to protect air quality in the state. A provision was added to this legislation to provide an incentive for industry to reduce air pollution emissions by giving special tax status to air pollution control equipment. Under the original legislation, the director of the Department of Health and Environmental Sciences (DHES) made the decision whether equipment, property or facilities were air pollution control subject to approval by the State Board of Equalization. The 1977 Legislature repealed this section of the Clean Air Act and moved the tax-related provisions to the Department of Revenue statutes. In 1979, the Legislature changed the statute so that decisions on what constituted air and water pollution control equipment, property or facilities were made by DHES and decisions on taxable value were made by the Department of Revenue. Appeals on classification were made to the Board of Health and Environmental Sciences and appeals on valuation to the State Tax Appeals Board (STAB). The language of the present Department of Revenue statute, 15-6-135 Class five

property, Sec. 2, reflects the 1979 changes which are currently in effect.

Current Law

MCA 15-6-135 specifies that Class five property for determining the taxable rate (percentage) will include air and water pollution control equipment. Air and water pollution control equipment are defined as "facilities, machinery or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing or storing pollutants, contaminants, wastes or heat." DHES is charged with determining if such utilization is being made. Our problem with the current statute is determining what qualifies as pollution control equipment when looking at "used" and "reduce or control." For example, should process equipment whose primary purpose is making a product receive Class five status because there is a side benefit of reducing air pollutants? Or, does the current definition mean that only add-on pollution control equipment qualifies? This difference in interpretation can have a major impact on revenues to local government.

Proposed Changes in HB 436

The proposed legislation provides more clarity on what qualifies as pollution control equipment. It also allows for rulemaking which will more fully define and characterize the equipment, machinery or property which can be classified as air or water pollution control equipment. The rules will also help to provide equal treatment of all applicants and streamline the DHES review process.

DHES would be pleased to address any questions from the committee.

EXHIBIT #2
DATE 2-10-93
HB-436

EXECUTIVE ACTION ON HB 475

Motion: **REP. HARPER MOVED HB 475 DO PASS.**

Motion: **REP. HARPER MOVED TO ADOPT THE AMENDMENTS AS PER EXHIBIT 1.**

Discussion:

REP. FOSTER said current statute provides for permits to be purchased at Clerk and Recorders Offices. The amendments specify permits may also be purchased at the Department of Health and Environmental Sciences (DHES).

Vote: Motion to amended carried 12 - 6.

Motion: **REP. REAM MOVED HB 475 DO PASS AS AMENDED.**

Discussion:

REP. FELAND said no one in his district likes this bill.

REP. HANSON said the people in her court house do not like the bill.

REP. FOSTER said he cannot see any justification for charging $25 for a birth certificate.

REP. HARPER said he supports the bill.

Motion/Vote: **REP. FELAND MADE A SUBSTITUTE MOTION THAT HB 475 BE TABLED.** Motion carried 14 - 4 with **REPS. HARRINGTON, HARPER, DOLEZAL and REAM** voting no.

EXECUTIVE ACTION ON HB 436

Motion: **REP. NELSON MOVED HB 436 DO PASS.**

Motion: **REP. NELSON moved to adopt the amendments as per EXHIBIT 2.** He said the amendments clarify language from legislation passed last session regarding the definition of air and water pollution for property tax purposes. HB 436 mandates a refinery would lose its tax exemption if, as a result of equipment failure, pollutants are released into the air.

Motion: **REP. ELLIOTT moved to segregate amendment #2.**

REP. REAM said the word "substantial" is vague and could be open to legal challenge.

REP. DRISCOLL said when the industry violates air standards they are fined by the federal government and the state. He said if this amendment passes, and the industry violates the air just once, the refinery will lose its tax advantage. He said the Board of Health will have to define air standards before they can take action on the industry's tax status.

Vote: Motion to adopt amendments 1 and 3 - 6 carried 18 - 2 with **REPS. McCAFFREE AND TUNBY** voting no.

Motion: **REP. ELLIOTT moved to strike the word "exclusively" and inset the word "primarily" in amendment #2, EXHIBIT 2.** He said"exclusively" is too strong and would rule out other by-products that come from the pollution control devices.

REP. DOLEZAL suggested inserting the word "predominantly" instead of "exclusively".

Following discussion of alternative language suggestions, **REP. ELLIOTT** withdrew his motion.

Motion/Vote: **REP. HARPER moved to strike "exclusively" and insert "that portion of".** Motion carried 19 - 1 with **REP. TUNBY** voting no.

Discussion:

REP. FOSTER asked for a definition of "identifiable" on page 2, line 23. **REP. ELLIOTT** replied it is a discreet portion of the plant.

Motion: **REP. DRISCOLL moved to strike the effective date page 6, section 2, line 12, by striking 1993 and inserting 1994, and on line 17, striking October 1, 1993, and inserting October 31, 1994.** **REP. DRISCOLL** said the Department and the industries need time to work on the issues.

Discussion:

Lee Heiman said subsection 2 is only in the bill because of the effective date of October 1 of this year. It would require the Department to institute rulemaking prior to October 1 of the effective date. He said if the bill is amended to affect only tax years beginning after October 31, 1994, then subsection 2 should be stricken.

REP. BOHLINGER said he opposes **REP. DRISCOLL'S** motion. The air needs to be cleaned up and the Committee should pass the bill out quickly.

REP. ELLIOTT said if the Department wrote the bill and they think they can do it in the time frame stated in the bill than the Committee should let them do it.

CHAIRMAN GILBERT said he agrees with **REP. DRISCOLL'S** amendment. He said the dates should be left as suggested, but placed into statute to instruct the Department they have to start earlier.

REP. DRISCOLL said, under current law, pollution control equipment is taxed at 3% during the construction phase. Upon completion, the tax rate is 9%. With an immediate effective date provision, refineries would have to pay the full 9% during construction also.

REP. HARPER said if **REP. DRISCOLL'S** amendment is adopted, the industries under construction will get a tax break, but if the effective date is adopted, the tax break ceases.

Motion/Vote: **REP. DRISCOLL moved to strike subsection 2.** Motion carried 19 - 1 with **REP. HARPER** voting no.

Motion/Vote: **REP. HARPER moved to amend page 2, line 24, by insert "under construction".** Motion carried 19 - 1 with **REP. REAM** voting no.

Motion/Vote: **REP. DRISCOLL MOVED HB 436 DO PASS AS AMENDED.** Motion carried unanimously. **EXHIBIT 3**

EXECUTIVE ACTION ON HB 616

Motion: **REP. DRISCOLL MOVED HB 616 DO PASS.**

Motion: **REP. DRISCOLL moved to adopt the amendments as per EXHIBIT 4.** The amendments clarify the status of negotiations that the Department of Health and Environmental Sciences (DHES) was not able to complete before the bill drafting deadline. Page 6, line 1, states DHES has to receive an award from the federal government before they can receive the $25 million from the state. He said the state will receive .5% from the sale of technology instead of the .05% listed.

REP. REAM said he thought sections 4, 5, and 6 were supposed to be stricken from the bill. **REP. DRISCOLL** said the Committee should strike sections 4, 5, and 6 through the effective date.

Motion/Vote: **REP. DRISCOLL moved to adopt the amendments as per EXHIBIT 4 including striking 4, 5, and 6, and renumbering the subsequent section.** Motion carried unanimously.

Motion/Vote: **REP. DRISCOLL MOVED HB 616 DO PASS AS AMENDED.** Motion carried 18 - 2 with **REPS. ELLIOTT AND FELAND** voting no.

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 3/5/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON	✓		
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. McCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. PANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Mr. Speaker: We, the committee on Taxation report that House Bill 436 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Gilbert, Chair

And, that such amendments read:

1. Page 1, line 21.
Following: "treatment."
Insert: "It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control."

2. Page 2, line 22.
Following: "means"
Insert: "that portion of"

3. Page 2, line 24.
Strike: "and"
Insert: "under construction, or"

4. Page 2, line 25.
Strike: "exclusively"

5. Page 3, line 15.
Following: "in"
Insert: "substantial"

6. Page 3, line 17.
Strike: "a"
Insert: "substantial"

7. Page 4, line 3.
Following: "report"
Insert: "continuous acts or patterns of"
Following: "noncompliance"
Insert: "at a facility"

8. Page 4, line 4.

Committee Vote:

Following: "revenue."
Insert: "Casual or isolated incidents of noncompliance at a facility do not affect certification."

9. Page 6, line 10.
Strike: "-- rulemaking"

10. Page 6, line 11.
Strike: "(1)"

11. Page 6, line 12.
Strike: "1993"
Insert: "1994"

12. Page 6, lines 13 through 17.
Strike: subsection (2) in its entirety

-END-

EXHIBIT 2
DATE 3-5-93
HB 436

Amendments to House Bill No. 436
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
February 11, 1993

Department change to Statement of Intent:
1. Page 1, line 21.
Following: "treatment."
Insert: "It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control."

Industry suggestions:

2. Page 2, line 25.
Strike: "exclusively"

3. Page 3, line 15.
Following: "in"
Insert: "substantial"

4. Page 3, line 17.
Strike: "a"
Insert: "substantial"

5. Page 4, line 3.
Following: "report"
Insert: "continuous acts or patterns of"
Following: "noncompliance"
Insert: "at a facility"

6. Page 4, line 4.
Following: "revenue."
Insert: "Casual or isolated incidents of noncompliance at a facility do not affect certification."

EXHIBIT 3
DATE 3-5-93
HB 436

Amendments to House Bill No. 436
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
March 5, 1993

1. Page 1, line 21.
Following: "treatment."
Insert: "It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control."

2. Page 2, line 22.
Following: "means"
Insert: "that portion of"

3. Page 2, line 24.
Strike: "and"
Insert: "under construction, or"

4. Page 2, line 25.
Strike: "exclusively"

5. Page 3, line 15.
Following: "in"
Insert: "substantial"

6. Page 3, line 17.
Strike: "a"
Insert: "substantial"

7. Page 4, line 3.
Following: "report"
Insert: "continuous acts or patterns of"
Following: "noncompliance"
Insert: "at a facility"

8. Page 4, line 4.
Following: "revenue."
Insert: "Casual or isolated incidents of noncompliance at a facility do not affect certification."

9. Page 6, line 10.
Strike: "-- rulemaking"

10. Page 6, line 11.
Strike: "(1)"

11. Page 6, line 12.
Strike: "1993"
Insert: "1994"

EXHIBIT #3
DATE 3-5-93
HB-436

12. Page 6, lines 13 through 17.
Strike: subsection (2) in its entirety

next fiscal year, the statute indicates that if the allocation formula has changed, it must be distributed in a different allocation. HB 641 will assure that the statutory language indicates that the cash collection should be allocated in the same manner as the revenue accrual.

Closing by Sponsor:

Rep. Foster did not offer any more remarks in closing.

EXECUTIVE ACTION ON HB 641

MOTION/VOTE:

Senator Towe moved HB 641 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (731539SC.Sma) Senator Towe will carry the bill on the Senate floor.

HEARING ON HB 436

Opening Statement by Sponsor:

Representative Tom Nelson, House District No. 95, presented HB 436, which is a bill having three actions: (1) It clarifies the definition of air and water pollution equipment for property tax purposes; (2) It provides requirements for rules governing the verification of the equipment; and (3) It specifies the roles of the Department of Revenue (DOR) and the Department of Health and Environmental Sciences (DHES) in classifying and valuing this equipment, because to do the job right, they have to work in concert. Rep. Nelson said an example where this bill would be needed would be a refinery that added equipment to cut down water pollution or air pollution, or where equipment is being added to an existing refinery or to a refinery being retrofitted with equipment, or in a business that is using waste products from a refinery and some of that equipment put into the new business plant is used to cut down pollution.

Rep. Nelson said a refinery is in a property class that is taxed at 9%. Equipment that is put into this plant for water and air pollution reduction is given a special tax status, and is taxed at 3%. This is a tax incentive to attract industry interested in reducing environmental air and water pollution. HB 436 further clarifies rules defining water and air pollution control equipment and establishes a procedure to apportion the value of multi-purpose equipment, which would be a fitting or piece of equipment that is designed to reduce the pollution but is also used in a manufacturing process. In this instance, a tax reduction would be apportioned because there could be a by-product sold as a result of the manufacturing process, so part of the property would be taxed at 9%, and part at 3%.

Rep. Nelson said the definition of air and water pollution equipment included "under construction" because it sometimes takes a couple of years to put a plant together and, even though the plant may not be in operation, taxes are assessed. He said the reason HB 436 is being so specific in its definitions, is because this tax break has been on the books for a number of years, but it has been exceedingly difficult for the Department of Revenue to go into the field and determine which equipment should be taxed at 9% and which should be taxed as 3%.

Proponents' Testimony:

Mike Mathew, Yellowstone County Commissioner, spoke in favor of HB 436. As the statute now reads, this classification category is determined by the DOR and the DHES, and from a rule-making and administrative point of view, there is no guidance or outline for application by industries. Mr. Mathew said that last year, a sulfur recovery operation went into business next to one of the local refineries in Yellowstone County. When construction was completed, that company filed for, and was given, a Class 5 designation of 3% tax on the entire facility. Commissioner Mathew said that plant does reduce sulfur emissions, but they also take sulfur recovery and sell sulfur products as a for-profit business. That plant needed to have some administrative rules to determine what part of their business is commercial enterprise and which is actual air pollution reduction. Mr. Mathew said the Yellowstone County Assessor and Treasurer feel HB 436 will improve the tax policy, and delaying that improvement a year doesn't make any sense. Mr. Mathew likes HB 436, but he asked to have the effective date changed to October 1, 1993.

Ted Doney spoke in favor of HB 436 as a representative of Rosebud Energy Corporation (REC), Billings Generation, Inc. (BGI), and ASARCO. Mr. Doney said REC is the general partner in the Colstrip Energy Limited Partnership Power Plant Project which is located approximately 7 miles North of Colstrip. Billings Generation is going to build a generation power plant in conjunction with the Exxon Refinery. That project will result in a net reduction in air emissions in Billings. ASARCO operates the E. Helena smelter and, in conjunction with air pollution control equipment, produces sulfuric acid which is sold on the commercial market. These three companies have a vital interest in HB 436. Mr. Doney said these three companies concur with Rep. Nelson's statement that there is a need for rules to clarify how the process works because there are no guidelines in existing law as to what does or does not qualify. Mr. Doney said the bill, as introduced, appeared to eliminate the opportunity to use the classified property classification if any of the equipment was used to produce a by-product. Mr. Doney said his companies could support HB 436 as it is now amended.

Rex Manuel, representing CENEX Petroleum Division, spoke in favor of HB 436, as it is presented. CENEX has spent $80 million in a project, still under construction, to clean up emissions

from their Laurel refinery. They request that the December 31, 1994, effective date remain because they want to complete construction prior to additional taxes being applied.

John Augustine, an employee and lobbyist for Conoco, said Conoco will support HB 436 as it is now written.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Halligan asked if the Committee could re-insert the language on Page 6, lines 20 - 24, if the effective date is left at December 31, 1994. Jeff Martin, Legislative Council Staff, said that language doesn't need to be re-inserted because HB 436 would go into effect on October 1, 1993, anyway, and the DOR and DHES would have that period of time to make rules, but if they go back to the former effective date of December 31, 1993, the committee would want to re-insert the stricken language. Thus, it is assumed the rule-making process would start October 1, 1993, and work toward the effective date of December 31, 1994. Mr. Manuel said CENEX would have no objection if rule-making began on October 1, 1993, as long as the effective date is December 31, 1994.

Senator Harp asked how a company is classified during the time the pollution control equipment is under construction, under the current law. Mr. Doney said there is a need for clarification, but the net effect is to allow the departments to adopt rules to apportion the property classifications during construction and after construction is completed. He also said BGI would not have a by-product, other than steam that is supplied to Exxon, and sulfuric acid is a by-product that is marketed by ASARCO. Mr. Doney said the way HB 436 is worded, the DHES would adopt rules on how to split the property for taxable evaluations. The DOR would establish the values, but the DHES determines what is and isn't pollution-control equipment.

Senator Harp asked about the word "substantial" on Page 3, Line 20. Mr. Doney said without the word "substantial" inserted, the law could be interpreted that only one violation in a year for a power break-down could cause a company to be out of compliance and wouldn't qualify for Class 5. This will allow flexibility for adopting rules to allow for those situations.

Senator Towe asked if the Federal EPA serves notice that the state implementation plan is out of compliance because of the projected failure to comply with the Federal Clean Air Standards,

does that mean that everybody in Billings loses their 3% air pollution equipment status? Jeff Chaffee, Air Quality Bureau of the DHES, responded that the way the DHES rules work, and the Federal Clean Air Act works, an adverse call on the state implementation plan is done because there would be monitor or model violations. Mr. Chaffee sees the wording in HB 436 more as referring to compliance with emission standards set on various industries. The DHES would look at compliance with emissions limits and how much percent of the time there would be violations on the standards. Mr. Doney said he was comfortable with this answer.

Senator Towe asked about the language on Page 3, Lines 1 - 15. Mr. Augustine said he understood that to mean that switching a type of fuel would not cause a loss of exemptions. Mr. Doney interprets this language as meaning that if they were to use more limestone in their processing, which is used to take sulfur out of the fuel, this would not allow them to take further advantage of the tax break. But, if they put on a new piece of equipment to control air pollution, that would qualify.

On further questioning, Mr. Mathew said Yellowstone County Commissioners were not pleased with the classification designation on the local sulfur recovery operation, which is totally classified as air pollution equipment with the exception of their administrative office, even though there is a by-product for-profit operation included. After the passage of HB 436 and rule-making is in place, Mr. Mathew believes there will be means to determine the product recovery and commercial benefit versus whether the equipment is in place primarily as air pollution control.

Senator Gage questioned certification and re-certification. Mr. Chaffee said there is no cost for certification; however, once a business is no longer in substantial compliance, they would go through a re-certification process.

Senator Gage asked Mr. Manuel, if it is determined during construction that their property would be classified as Class 5 at 3% tax, but without HB 436, they wouldn't receive that tax break, would that make a difference regarding the effective date of the bill. Mr. Manuel said CENEX wouldn't resist so much.

Senator Towe asked Rep. Nelson if the fiscal note on HB 436 is covered by HB 2. Rep. Nelson said as far as he knows, it will be covered.

Mr. Manuel, responding to Senator Towe's questions, said he understands there is an agreement on the classification while the pollution equipment is under construction, and CENEX wanted it extended because they didn't want any changes in classification while it is still under construction. Harry Peterson, Property Tax Division, DOR, said to his knowledge, there is no agreement with CENEX as far as the classification of their new project.

Mr. Peterson said it is valued as Class 8 at 9% tax while under construction, under the current statute. Mr. Manuel will check to see if it is in his company's best interests to move the effective date forward.

Closing by Sponsor:

Rep. Nelson offered no further remarks in closing.

EXECUTIVE ACTION ON SB 308

MOTION/VOTE:

Senator Stang moved SB 308 BE TABLED. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON HB 167

MOTION/VOTE:

Senator Harp moved HB 167 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (731529SC.Sma) Senator Halligan to carry the bill on the Senate floor. (Please refer to Minutes of April 2, 1993, for further action on HB 167.)

EXECUTIVE ACTION ON HB 181

DISCUSSION:

Senator Stang questioned the $1,000 penalty on HB 181. Senator Halligan explained out-of-state interests transport bees into Montana and our state has no control over the quality of these bees, or the diseases they carry.

Senator Grosfield asked if the penalty would be paid into the General Fund. Senator Halligan said this is correct, and the industry supported the strong penalties. The General Fund money for the program was eliminated, and these fees replace the General Fund monies.

Senator Gage pointed out that this bill would allow authority to levy administrative penalties that should be earmarked to the General Fund instead of the Department's Special Revenue Account.

MOTION/VOTE:

Senator Stang moved HB 181 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (731535SC.Sma) Senator Crippen will carry the bill on the Senate floor. (Please refer to Minutes of April 2, 1993, for further action on HB 181.)

ROLL CALL

SENATE COMMITTEE TAXATION DATE 4-1-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	✓		
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty	✓		
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg			✓
Sen. Yellowtail	✓		

FC8

Attach to each day's minutes

DATE 1-1-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 436, 539, 627, 641

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dave Brown	sponsor - HD #72	539	X	
Bill Salisbury	MDT	539	X	
GEO. BENNETT	MONT. BKRS ASS'N	HB 627		X
THOMAS L HARRIS	DOT	HB 539	X	
Ronda Alexander	MT. Petroleum Marketers	HB 539	X	
WILLIAM F. GOWEN	MONTANA LAND TITLE ASS'N	HB 627		X
Mike Mathews	Gallatin Co.	HB 436	X	
Ben Havdahl	MT MOTOR CARRIERS	HB 539	X	
Connie Griffith	Dept of Admin	HB 641		
Tim Manuel	CEN/EX	HB 436	✓	
MIKE MICONE	[illegible]	HB 436	*	
Carl Schweitzer	Mont Coal Assoc	HB 436	X	
Don Allen	MONTANA [illegible] ASS'N	HB 436	✓	
Ted Dorey	Rosebud Energy Corp.; ASARCO; Billings Logan Bay, Inc.	HB 436	—	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DISCUSSION:

Senator Gage asked where, in the body of the bill, does it indicate establishing priority designation. Jeff Martin responded that under Section 90-6-207, priorities for impact grants are discussed. These are just being included in the list.

VOTE:

The substitute motion for adoption of amendments 1-11 on Exhibit No. 10 CARRIED 4-2 on Roll Call Vote (#1).(hb035003.ajm)

MOTION/VOTE:

Senator Halligan moved HB 350 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote with Senator Harp voting "NO". (761303SC.San) Senator Weeding will carry the bill on the Senate floor.

The chair was turned back over to Chairman Halligan.

EXECUTIVE SESSION ON HB 196

DISCUSSION:

Amendments 1-13, prepared by Greg Petesch, were distributed, with a copy attached to these minutes as Exhibit No. 11. Mr. Petesch, Legislative Council, said the amendments were prepared at the request of the Department of Revenue, and will return the bill to the form as introduced, because this is the methodology the DOR wanted to use to compute the reimbursement.

MOTION/VOTE:

Senator Harp moved HB 196 BE CONCURRED IN. The motion CARRIED on oral vote with Senator Stang voting "NO". (741555SC.Sma) Senator Gage will carry the bill on the Senate floor.

EXECUTIVE SESSION ON HB 436

DISCUSSION:

Senator Towe reported his conversation with Rex Manuel about the pollution control bill. Mr. Manuel said as far as the effective date is concerned, they still insist that they want the later effective date of 1994. They are not concerned that they may be losing some tax advantages with the later effective date because they feel their equipment will be on line and they will get the advantage for the full year this year anyway with their completed air equipment; they want the time to hassle with the Department regarding dividing up how much goes to air pollution

and how much is not air pollution equipment. However, Senator Towe thinks Mr. Manuel recognized that as a not very valid argument in this case, and there are a number of people who are most anxious to have that effective date right away. For all practical purposes, it clarifies the law and as soon as the law can be clarified, the state is better off.

MOTION/VOTE:

Senator Towe moved to change the effective date on HB 436 and re-instate the language in Section 2 that was stricken, and strike "1994". The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION:

Exhibit No. 12 to these minutes is an amendment to HB 436 presented by Rep. Tom Nelson, sponsor of the bill.

MOTION/VOTE:

Senator Towe moved to adopt the amendment on Exhibit No. 12. The motion CARRIED UNANIMOUSLY on oral vote.

MOTION/VOTE:

Senator Towe moved HB 436 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY on oral vote. (761306SC.San) Senator Towe will carry the bill on the Senator floor.

EXECUTIVE SESSION ON HB 303

DISCUSSION:

Jeff Martin explained that Senator Van Valkenburg had proposed an amendment to Page 3, Lines 6 and 7, striking "or for protecting the natural environment", which was already adopted by this Committee in a previous meeting.

MOTION/VOTE:

Senator Doherty moved HB 303 BE CONCURRED IN AS AMENDED, with a title change. The motion CARRIED UNANIMOUSLY on oral vote. (741603SC.Sma) Senator Doherty will carry the bill on the Senate floor.

EXECUTIVE SESSION ON HB 330

DISCUSSION:

Exhibit No. 13 to these minutes, amendments requested by Senator Towe, were distributed and explained by him.

ROLL CALL

SENATE COMMITTEE TAXATION DATE 4-2-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	✓		
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty	✓		
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg	✓		
Sen. Yellowtail			✓

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

April 5, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 436 (third reading copy -- blue), respectfully report that House Bill No. 436 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Mike Halligan, Chair

That such amendments read:

1. Page 4, lines 16 and 17.
Following: "the" on line 16
Insert: "certification,"
Following: "classification" on line 17
Insert: ","

2. Page 4, line 19.
Strike: "classification"
Insert: "certification"

3. Page 4, line 20.
Strike: "defendant"
Insert: "respondent"

4. Page 4, line 21.
Strike: "value"
Insert: "classification or valuation"

5. Page 4, line 24.
Strike: "defendant"
Insert: "respondent"

6. Page 6, line 17.
Following: "~~rulemaking~~"
Insert: "-- rulemaking"

7. Page 6, line 18.
Following: "~~(1)~~"
Insert: "(1)"

8. Page 6, line 19.
Strike: "1994"
Insert: "1993"

Amd. Coord. Towe

9. Page 6, line 25.
Following: line 24
Insert: "(2) The department of revenue and the department of health and environmental sciences may institute rulemaking under Title 2, chapter 4, prior to October 1, 1993, to implement [this act], but the rules may not be effective prior to October 1, 1993."

-END-

SEN. TAX-TOW
EXHIBIT NO. 12
DATE 4-2-93
BILL NO. HB 436

A person may appeal the classification, certification or valuation of the property to the state Tax Appeal Board. In the case of an appeal from a property certification issued by the Department of Health and Environmental Sciences (DHES), the DHES may be named as a respondent, as appropriate. Appeals on the classification or valuation of property shall name the Department of Revenue as respondent.

OK with Tom Nelson